

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

MARGARET P. IUTERI, :  
 :  
 Plaintiff, :  
 :  
 v. : CIV. NO. 3:03CV393(MRK)  
 :  
 JO ANNE B. BARNHART, :  
 COMMISSIONER OF THE :  
 SOCIAL SECURITY :  
 ADMINISTRATION, :

Defendant.

**RECOMMENDED RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Margaret Iuteri brings this action under § 205(g) of the Social Security Act ("the Act"), 42 U.S.C. § 405(g), seeking review of a final decision of the Commissioner of Social Security ("the Commissioner"), denying plaintiff disability insurance benefits. Pending before the court is plaintiff's Motion for Summary Judgment/Remand [doc # 9], and defendant's Motion to Affirm the Decision of the Commissioner [doc # 16].

The court must determine whether there is substantial evidence in the record to support the finding of the Administrative Law Judge ("ALJ") that plaintiff is not disabled. The issues presented are whether the ALJ's assessment of plaintiff's credibility is supported by substantial evidence, and whether the ALJ considered the full

range of plaintiff's mental and physical impairments in determining that plaintiff can perform a limited range of light work.

For the reasons discussed below, plaintiff's Motion for Summary Judgment/Remand [doc # 9] is **GRANTED IN PART** to the extent that it seeks remand, and **DENIED IN PART**, to the extent that it seeks an immediate award of benefits. Defendant's Motion for Order Affirming the Decision of the Commissioner [doc # 16 ] is **DENIED**.

## II. PROCEDURAL HISTORY

Margaret Iuteri, the plaintiff, filed an Application for Disability Insurance Benefits on October 16, 1999, alleging disability since July 1, 1997. [Certified Transcript of Administrative Proceedings, compiled on April 23, 2003 ["Tr." ] 247-249.] Her claim was denied initially on March 18, 2000, and upon reconsideration on March 27, 2000. [Tr. 203-206, 208-211.] The plaintiff filed a request for a hearing before an Administrative Law Judge on September 18, 2000. [Tr. 212.] A hearing was held before ALJ Ronald Thomas on August 13, 2001. [Tr. 30-74.] Plaintiff, represented by counsel, appeared and testified at the hearing. [Id.] Testimony was also offered by a vocational expert, Dr. Jeff Blank, and a medical expert, Dr.

Amy Hopkins. [Id.] On October 24, 2001, the ALJ found the plaintiff not disabled within the meaning of the Social Security Act. [Tr. 17-28.] Plaintiff requested a review of the decision on October 29, 2001. [Tr. 11-13.] On February 27, 2003, the Appeals Council denied plaintiff's request for review, rendering the ALJ's decision the final decision of the Commissioner. [Tr. 6-7.] This appeal followed.

### III. LEGAL STANDARD

#### A. Scope of Review

The scope of review of a disability insurance determination involves two levels of inquiry. The court must first decide whether the Commissioner applied the correct legal principles in making the determination. Next, the court must decide whether the determination is supported by substantial evidence. See Balsamo v. Chater, 142 F.3d 75, 79 (2d Cir. 1998). Substantial evidence is evidence that a reasonable mind would accept as adequate to support a conclusion; it is more than a "mere scintilla." Richardson v. Perales, 402 U.S. 389, 401 (1971); Yancey v. Apfel, 145 F.3d 106, 110 (2d Cir. 1998). The substantial evidence rule also applies to inferences and conclusions that are drawn from findings of fact. See Gonzalez v. Apfel, 23 F. Supp. 2d 179,

189 (D. Conn. 1998); Rodriguez v. Califano, 431 F. Supp. 421, 423 (S.D.N.Y. 1977). The court may not decide facts, reweigh evidence or substitute its judgment for that of the Commissioner. See Dotson v. Shalala, 1 F.3d 571, 577 (7th Cir. 1993). The court must scrutinize the entire record to determine the reasonableness of the ALJ's factual findings. In reviewing an ALJ's decision, the court considers the entire administrative record, including new evidence submitted to the Appeals Council following the ALJ's decision. Perez v. Chater, 77 F.3d 41, 46 (2d Cir. 1996). The court's responsibility is always to ensure that a claim has been fairly evaluated. Grey v. Heckler, 721 F.2d 41, 46 (2d Cir. 1983).

The court must also keep in mind that, "[w]here there is a reasonable basis for doubt whether the ALJ applied correct legal principles, application of the substantial evidence standard to uphold a finding of no disability creates an unacceptable risk that a claimant will be deprived of the right to have her disability determination made according to correct legal principles.'" Schaal v. Apfel, 134 F.3d 496, 504 (2d Cir. 1998) (quoting Johnson v. Bowen, 817 F.2d 983, 986 (2d Cir. 1987)). Similarly, the ALJ must set forth the crucial factors in any determination with sufficient specificity to enable a reviewing court to decide whether the

determination is supported by substantial evidence. Ferraris v. Heckler, 728 F.2d 582, 587 (2d Cir. 1984). Thus, although the ALJ is free to accept or reject the testimony of any witness, a finding that the witness is not credible must nevertheless be set forth with sufficient specificity to permit intelligible review of the record. Williams v. Bowen, 859 F.2d 255, 260-61 (2d Cir. 1988). Moreover, when a finding is potentially dispositive on the issue of disability, there must be enough discussion to enable a reviewing court to determine whether substantial evidence exists to support that finding. See Peoples v. Shalala, 1994 WL 621922, \*4 (N.D. Ill. 1994). See generally Ferraris, 728 F.2d at 587.

B. Eligibility to Receive Federal Disability Benefits

To receive federal disability benefits, an applicant must be "disabled" within the meaning of the Social Security Act ("the Act"). See 42 U.S.C. § 423(a),(d). An individual is disabled if he or she can establish an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Id. § 423(d)(1)(A), 1382c(a)(3). A "physical or

mental impairment" must be supported by medically acceptable clinical and laboratory diagnostic techniques. Id. The impairment must be of such severity that the claimant "is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." Id. § 423(d)(2)(A).

The Commissioner is required to apply a five-step analysis in evaluating disability claims, as provided by the Act. See 20 C.F.R §§ 404.1520, 416.920. The Commissioner must first determine whether the claimant is engaged in substantial gainful activity. See 20 C.F.R. §§ 404.1510(b), 404.1572(b). If not, the Commissioner next considers whether the claimant has a "severe impairment" which limits his or her ability to perform basic work activities. See 20 C.F.R. § 404.1520(c). If the claimant suffers such an impairment, the third inquiry is whether, based solely on medical evidence, the claimant has an impairment listed in Appendix 1 of the regulations (the "Listings"). See 20 C.F.R. § 404.1520(d); Bowen v Yuckert, 482 U.S. 137, 141 (1987); Balsamo, 142 F.3d at 79-80. If the impairment meets or equals one of the impairments in the Listings, the claimant is automatically considered disabled, without considering vocational factors

such as age, education, and work experience. See 20 C.F.R. § 404.1520(d); Balsamo, 142 F.3d at 80. If the impairment does not meet or equal one of the listed impairments, the fourth inquiry is whether, despite the claimant's severe impairment, he or she has the residual functional capacity ("RFC") to perform his or her past work. See 20 C.F.R. 404.1520(e). If the claimant is unable to perform his or her past work, as a final step, the Commissioner must determine whether there is other work that the claimant could perform. See 20 C.F.R. 404.1520(f).

The claimant has the initial burden to establish disability with respect to the first four steps. See 42 U.S.C. §§ 423(d)(5); Rivera v. Schweiker, 717 F.2d 719, 722 (2d Cir. 1983). The burden shifts to the Commissioner at step five to show that the claimant has the residual functional capacity to perform substantial gainful activity in the national economy. See Balsamo, 142 F. 3d at 80.

The RFC determination may require that the Commission apply the Medical Vocational Guidelines ("the grid"), which places claimants with severe exertional impairments who can no longer perform their past work into grid categories according to their RFC, age, education and work experience, which then determines the claimant's disability status. See 20 C.F.R. §

404.1520(f). If non-exertional limitations significantly diminish a claimant's ability to perform the full range of work in a particular grid category, testimony of a vocational expert or other similar evidence with regard to the existence of jobs in the national economy is required. See Bapp v. Bowen, 802 F.2d 601, 606 (2d Cir. 1986).

#### IV. FACTUAL BACKGROUND<sup>1</sup>

##### A. Plaintiff's Education and Work History

Ms. Iuteri was born on August 27, 1950, and is now 53 years old. [Tr. 83.] Her date last insured is June 2001. [Tr. 426.]<sup>2</sup> She has a 7<sup>th</sup> grade education. [Tr. 35.] From 1987 until 1994, plaintiff worked at a distribution warehouse for Ann Taylor, where she lifted garments out of boxes, distributed them into carriages, and wheeled the carriages to a packing room. [Tr. 281.] She spent the majority of the day standing and walking, and was required to lift over 50 pounds. [Id.] She was required to reach her arms over her shoulders repeatedly to hang clothing on a high rack. [Tr. 287.] From

---

<sup>1</sup>In discussing Ms. Iuteri's factual background, the Court focuses on documents most relevant to plaintiff's claims.

<sup>2</sup>Date last insured refers to the date before which the plaintiff must prove disability in order to be eligible for disability benefits. See 42 U.S.C. § 423(a)(1)(A) and (c); 20 C.F.R. §§ 404.101, 404.120, and 404.315(a).

1968-1987, plaintiff worked at Par-ex, a shirt factory, which involved piling, inspecting, and rolling shirts. [Tr. 280,282.] From 1966-1968, plaintiff worked washing dishes and handling food at St. Raphael's Hospital. [Tr. 280.] After leaving her job at Ann Taylor in 1994, plaintiff engaged in temporary employment. [Id.] The ALJ found that plaintiff has not engaged in substantial gainful activity since July 1, 1997. [Tr. 247.]

B. Plaintiff's Medical History

Plaintiff has been treated at Community Health Care Plan for a history of recurrent neck, arm, shoulder, and hand pain. [Tr. 115-171.] Plaintiff began complaining of pain in the left shoulder in early 1992, apparently as the result of an injury she sustained at her job at Ann Taylor. [Tr. 141.] In 1993, plaintiff reported hand pain and numbness, also aggravated by her work at Ann Taylor. [Tr. 116.] An x-ray showed "findings compatible with muscle spasms, multi-level degenerative disc disease, most marked at C5-6." [Tr. 156.] Plaintiff was treated for chronic shoulder pain again in September 1994 at Industrial Health Care Company; she reported the pain in her shoulder increased since she returned to her job. [Tr. 175.] In October 1994, she was diagnosed by Dr. Jennifer Patton with

right shoulder tendonitis due to repetitive overhead reaching. [Tr. 172-182.] Plaintiff was prescribed Daypro and Flexeril, and was limited to light work with no overhead activities. [Tr. 172.]

Between July 1996 and February 1997, plaintiff was treated by a chiropractor, Michael Barone, D.C., M.S., for pain in her neck, left shoulder and back for injuries sustained during a motor vehicle accident on July 17, 1996. [Tr. 183.] Barone diagnosed plaintiff with cervical disc syndrome, cervical related headaches, brachial neuritis, cervical related paresthesia, lumbar disc syndrome, and discogenic sciatica. [Id.] He found that plaintiff had sustained a 7% permanent partial impairment of the cervical spine and a 9% permanent partial impairment of the lumbar spine. [Id.] He found plaintiff was capable of performing mental work and most physical functions at work, except heavy lifting. [Id.]

In September 1997, plaintiff underwent a consultative neurological examination conducted by Dr. Thomas Schweller. [Tr. 186-189.] She was diagnosed with musculoligamentous sprain of the back and spine, bilateral shoulder strains, left thumb pain, and poor hearing. [Tr. 188.] The doctor opined that she would be capable of sitting, standing, or walking for

six hours a day; could lift 20 pounds occasionally and ten pounds frequently; was limited in bending and stooping; should avoid reaching above eye level and repeatedly pushing and pulling with both upper extremities, but would have no other limitations on other fine or gross manipulations. [Id.]

Plaintiff was treated at the Hill Health Center from December 1998 to October 1999 for various ailments. [Tr. 302-317.] She was diagnosed with diabetes in December 1998 and prescribed Glucotrol.[Tr. 311-213.] She was also diagnosed with abnormal vision and hearing, and complained of anxiety. [Id.] In January 1999, plaintiff received counseling for diabetes and meal planning, and notes indicate she appeared to be following her prescribed diet. [Tr. 307.] In March 1999, she was seen by Dr. Assevero for lower back pain. He prescribed Naprosyn and noted that there was no evidence of neurological deficits. [Tr. 305.] She was diagnosed with moderate conductive hearing loss in the right ear, moderate mixed hearing loss in the left ear, and tinnitus in the right ear. [Tr. 322.]

In June 1999, plaintiff was seen by Dr. Michael Luchini, an orthopedic surgeon, for complaints of left hand numbness and tingling and left shoulder pain and weakness. [Tr. 301.] He diagnosed left shoulder impingement and, based on nerve

conduction studies, carpal tunnel syndrome of the left hand, and "borderline" carpal tunnel syndrome of the right hand.

[Tr. 300-301.] She was treated with a steroid injection and a splint. {Tr. 300.]

Plaintiff returned to Dr. Assevero in September 1999 with complaints of pain in the left arm, and was prescribed Naprosyn. [Tr. 304.] She reported that she had stopped taking Glucotrol because she wanted to control the diabetes "on her own." [Tr. 304.] Notes from a visit in October 1999 indicate that plaintiff was feeling better and was able to move her arm while taking Naprosyn. [Tr. 303.] In November 1999, plaintiff complained of headaches, which she relieved by marijuana use. [Tr. 302.] She reported that she was taking her prescribed medications. [Id.]

In January 2000, plaintiff underwent a consultive psychiatric evaluation with Dr. Naimet Ahmed Syed. [Tr. 331.] She reported experiencing panic attacks, which she traced back to cruel treatment by her mother beginning at age fourteen. [Id.] She reported feeling anxious and fearful, which she treated with marijuana, and reported difficulty with concentration, focus and memory loss. [Id.] Dr. Syed found plaintiff to be tense, anxious, apprehensive, and mildly depressed. [Id.] He found her to limited in attention span and

concentration and noted problems in short-term memory. [Tr. 334.] He found her to be of average to low average intelligence. [Id.] He diagnosed plaintiff with panic disorder, post-traumatic stress disorder, and episodic cannabis dependence. [Tr. 334.] He found a Global Assessment of Functioning ("GAF") score of about 35-40.<sup>3</sup> [Id.] He noted that a family doctor prescribed Ativan to control panic attacks, but found that the dosage was "'subtherapeutic' concerning the severity of her condition," and that she "needs much more aggressive treatment, including higher dosage of medications and more psychotherapy." [Tr. 335.]

In January 2000, plaintiff was seen by Dr. Mallick Alam at Connecticut Disability Determination Services for a consultative physical exam. [Tr. 336-340.] He found that plaintiff displayed a reasonable appearance and behavior but had a tense facial expression and hand tremors. [Tr. 339.] She

---

<sup>3</sup> The Global Assessment of Functioning Scale considers psychological, social, and occupational functioning on a hypothetical continuum of mental health illness. Scores range from 100-90 (superior functioning in a wide range of activities) to 10- 1 (persistent danger of severely hurting self or others or persistent inability to maintain personal hygiene, or serious suicidal act with clear expectation of death). The 40-31 range involves "some impairment in reality testing or communication (e.g. speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g. depressed man avoids friends, neglects family, and is unable to work)." [Tr. 416.]

appeared anxious and hyper, and appeared to be of average memory and general intellectual function. [Id.] He noted tenderness around the left side of the neck consistent with a large lymph node or gland. [Id.] He found a foot injury, and noted that during testing of gait and balance, she complained of dizziness and started falling. [Id.] He was unable to complete musculoskeletal testing as a result. [Tr. 339.] Dr. Alam diagnosed plaintiff with anxiety, diabetes mellitus, dizziness, pain around the shoulder and neck, headache, and a left foot wound resulting from a fall on December 24, 1999. [Tr. 339.]

In March 2000, plaintiff was treated by Dr. Richard Feldman, a podiatrist, for a metatarsal fracture. [Tr. 379.] He counseled her that the condition required internal fixation instead of casting because of the degree of separation of the fragments. [Id.] In May 2000, plaintiff reported that her foot was feeling better and decided against internal fixation. [Id.]

In June 2001, plaintiff underwent a psychiatric evaluation conducted by Victoria Dreisbach. [Tr. 410.] Plaintiff reported that she had experienced anxiety for the past twenty years, but that it had become progressively worse and more disabling since the death of her mother in November

2000. [Id.] She stated that she had panic attacks on a daily basis, and described herself as "very nervous." [Id.] She reported that she was worried about taking medications for her anxiety and had refused treatment for carpal tunnel syndrome because she did not want to have surgery. [Id.] She reported that she felt occasionally sad, and noticed increased mood swings and anxiety when she loses weight. [Id.] She reported unreasonable fears about soap remaining on dishes, tap water contamination, and reported self-medicating her anxiety symptoms by smoking about "three hits" a day of marijuana.[Id.] She reported she had been prescribed Dexamethasone, but experienced mood swings as a side effect, and discontinued treatment. [Tr. 411.] She reported she has had anxiety about taking medication since that time. [Id.] Dr. Dreisbach noted that plaintiff was diagnosed with an anxiety problem in the 1980's, was prescribed Lorazepam with good effect, but discontinued the medication because she was "scared of the side effects." [Id.] According to the treatment notes, plaintiff was prescribed Prozac and Buspar and also discontinued these medications because of the side effects, which Dr. Dreisbach described as symptoms of

anaphylaxis. [Id.]<sup>4</sup> Dr. Dreisbach diagnosed plaintiff with panic disorder without agoraphobia and cannabis abuse. [Tr. 412.] She also noted that, given plaintiff's medical history, anxiety due to general medical condition should also be considered. [Id.] She assessed a GAF of 50.<sup>5</sup> She prescribed Paxil and Klonopin to control anxiety. [Tr. 413.]

B. Medical Opinions from Non-Treating Sources

The record also contains several reports from state agency reviewing physicians and psychologists. Two residual functional capacity assessments on plaintiff's mental capacity were completed by a state agency doctor, apparently Dr.

---

<sup>4</sup>Anaphylaxis is "an acutesystemic (whole body) type of allergic reaction. It occurs when a person has become sensitized to a certain substance or allergen (that is, the immune system has been abnormally triggered to recognize that allergen as a threat to the body). On the second or subsequent exposure to the substance, an allergic reaction occurs. This reaction is sudden, severe, and involves the whole body. Tissues in different parts of the body release histamine and other substances. This causes constriction of the airways, resulting in wheezing; difficulty breathing; and gastrointestinal symptoms such as abdominal pain, cramps, vomiting, and diarrhea." MedlinePlus at <http://www.nlm.nih.gov/medlineplus/ency/article/000844.htm>.

<sup>5</sup>GAF level 50-41 involves "serious symptoms (e.g. suicidal ideation, severe obsessional rituals) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

Schumacher, both dated February 11, 2000. [Tr. 341-448.]<sup>6</sup> He found that in the absence of the effects of substance abuse, plaintiff was moderately limited in the following areas: the ability to understand, remember, and carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; the ability to interact appropriately with the general public. [Tr. 342.] He found that with the effects of substance abuse, plaintiff was additionally moderately limited in the ability to perform activities within a schedule, to maintain regular attendance, and to be punctual within customary tolerances. [Tr. 345.] In both cases, the doctor opined that these limitations would not prevent her from performing simple, routine types of vocational tasks. [Tr. 343-347.]

Dr. Steven Edelman, a state agency doctor, completed a physical residual functional capacity assessment on March 7, 2000. He opined that plaintiff was capable of lifting 20 pounds occasionally, and ten pounds frequently; could stand,

---

<sup>6</sup>The doctor's signature is largely illegible.

walk, or sit for six hours in an eight-hour work day. [Tr. 370.] He found plaintiff was limited in the ability to reach with the left arm and to use her hands for fine manipulations. [Tr. 372.] He found that plaintiff's allegations of symptoms were credible in light of the medical evidence and determined plaintiff was capable of performing light work with appropriate restrictions. [Tr. 374.]

Dr. Firooz Golkar completed a physical residual functional capacity assessment on June 21, 2000. [Tr. 381-390.] He opined that plaintiff was capable of lifting 20 pounds occasionally and ten pounds frequently; could stand, walk, or sit for six hours in an eight-hour workday; could occasionally climb stairs; was limited in the use of hands for fine manipulation; was limited in hearing; and should avoid a workplace with concentrated noise, vibration, or hazards. [Tr. 282-285.]

An Adult Mental Impairment Summary Form was completed by Deb Rosenberger on July 5, 2000, diagnosing plaintiff with panic disorder, "PTSD," and cannabis dependence, episodic. [Tr. 391-392.] She notes that plaintiff stated "that she has panic attacks for which she has never sought [treatment] secondary to lack of money." [Tr. 391.]

Dr. Wilbur Nelson, a state agency doctor, completed a

mental residual functional capacity assessment on July 6, 2000. He found that plaintiff suffered from anxiety and experienced "recurrent severe panic attacks manifested by a sudden unpredictable inset of intense apprehension, fear, terror, and sense of impending doom occurring on average of at least once a week," and "recurrent and intrusive recollections of a traumatic experience as the source of marked distress."

[Tr. 397.] He found plaintiff had cannabis dependence, episodic. [Tr. 399.] He opined that, with and without the effects of substance addition, plaintiff was moderately limited in the following areas: the ability to understand, remember, and carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; the ability to interact appropriately with the general public; the ability to set realistic goals or make plans independently of others.

[Tr.405.] He opined that plaintiff's functional capacity would not be significantly reduced due to psychiatric impairments.

[Tr. 406.]

C. Plaintiff's Testimony

Plaintiff testified at the disability hearing on August 13, 2001. She stated that was 50 years old, single, and lived with a friend who is "like her husband." [Tr. 34.] She did not have a driver's license. [Tr. 35.] She testified that she worked at Ann Taylor from 1987-1994; that she suffered from a rotator cuff injury in 1992, and developed tendonitis in 1994 while on that job. [Tr. 36, 50.] In 1997, she worked sporadically. [Tr. 36.] Prior to her job at Ann Taylor, she stated that she worked inspecting, cleaning, and lifting shirts from 1968 to 1987. [Tr. 37.] She washed dishes and put food together in a kitchen at a hospital from 1966-1968. [Tr. 48.]

She testified that she has diabetes and is prescribed "either Amberol or Glucophage." [Tr. 37, 43.] When asked whether she takes the medication, she responded:

When I read the side effects, I don't want to take them because it says sometimes you'll have a rapid heart beat, and I have an anxiety thing that tells me, oh you're going to get a rapid heart beat, something is going to go wrong, you're going to get dizzy, and so I don't take them. We have loads and tons of at home that I don't take. [Tr. 43.]

She testified that she gets shaky and drops things out of her hands, such as two-liter soda bottles and large tubs of

margarine. [Id.] She testified that she was diagnosed with carpal tunnel syndrome two years ago, and was given a cortisone shot, which was ineffective. [Tr. 38.] She was advised about the possibility of surgery but refused, stating that "I'm afraid of the operation because the anxiety makes me think I am going to pass away while he is operating." [Id.] She testified that she can sometimes button a shirt, but that her hand shakes while doing so. [Tr. 39.] She receives help from her boyfriend doing the laundry and washing the dishes, and can only lift small objects of less than two pounds. [Tr. 29, 51] She testified that she has trouble reading and wears glasses. [Tr. 39-40.]

She testified that she is bothered by her anxiety [Tr. 37], that she had been trying to find a psychiatrist for the past three years, and visited Dr. Dreisback, who prescribed Paxil in June 2001. [Tr. 40.] She testified she had been taking Paxil before bed and that it was helping her sleep and calm down. [Tr. 41.] She testified that, in the last six months to a year, she did smoke pot twice a day to reduce anxiety, but had stopped since she has been taking Paxil. [Id.] She testified that she had recently started seeing a counselor regularly, and that it was helping to talk about her problems. [Tr. 42.]

She reported numbness in her fingers and feet. [Tr. 43.] She said she had trouble walking and must stop when she walks up and down steps. [Tr. 44.] She wears a hearing aid, but often does not wear it because of a pounding in her ear. [Tr.44.] She reported that, at the time of the hearing, she was waiting for results of testing on her diabetes, and for additional problems with her thyroid gland and possible high blood pressure. [Id.] She testified that on a daily basis she makes breakfast, does the laundry and goes grocery shopping, all with the help of her boyfriend. [Tr. 45.]

D. Medical Expert Testimony

Medical Expert Dr. Amy Hopkins appeared and testified at the hearing. She reviewed plaintiff's medical history. She summarized the evidence as follows: moderate hearing loss correctable with hearing aids; diabetes, which is not under control, but with no solid evidence of end-organ damage; reports of carpal tunnel syndrome but with no treatment and no evaluation in the last two years; reports of shoulder problems but with no recent treatment or evaluation; a history of PATH disorder, but with only one consultative exam and one recent psychiatric evaluation. [Tr. 57.] She stated that "it would be extremely difficult to sort out the psychiatric issues, you

know, in the presence of somebody who smoked marijuana." [Tr. 58.] She found that plaintiff's impairments did not meet or equal a listed impairment. [Tr. 60.]

On cross examination, plaintiff's counsel questioned Dr. Hopkins about the significance of Dr. Syed's determination that plaintiff had a GAF score of 35-40. Plaintiff's counsel asked whether a GAF score of 40 would be consistent with someone who is unable to work. [Tr. 62.] She responded that it could indicate an inability to work, but not necessarily. [Tr. 62.] Upon further questioning, she agreed that someone with a GAF of 35-40 would be less likely to be able to work than someone with a GAF of 70. [Tr. 63.]

#### E. Vocational Testimony

Vocational expert ("VE") Dr. Jeffrey Blank appeared and testified at the administrative hearing. [Tr. 63-69.] Dr. Blank described plaintiff's past relevant work as unskilled in nature, and varying from heavy to light. [Tr. 64.] Dr. Blank was asked whether an individual of plaintiff's age, education, and past relevant work history, who was limited by the inability to complete a task from beginning to end due to panic attacks and anxiety in an average eight-hour day, would be able to perform his past relevant work or other jobs in the

national economy. [Id.] He testified that such an individual would not be able to perform her past relevant work given the limitations in completing a task on a timely basis. [Tr. 65.] He stated there would be no other jobs that this individual could perform. [Id.]

The ALJ asked Dr. Blank to assume a second hypothetical in which the individual was capable of "light work with further restrictions for the need for a simple routine, repetitious workplace with one- or two-step instructions; secondly supervised low-stress environment which is what I would define as requiring few decisions; and thirdly, no reaching above the shoulders with either arm." [Tr. 66.] Dr. Blank testified that the individual would not be able to perform past relevant work, but that there would be other light work available such as packing machine operator, molding machine operator, or a grinding machine operator. [Id.] Dr. Blank reported that at least 2,500 packaging machine operator positions exist locally, and at least 125,000 exist nationally. He reported that 1,000 molding positions exist locally, and at least 60,000 exist nationally. [Id.] He reported that 800 grinding machine operator positions exist locally, and at least 20,000 exist nationally. [Id.]

On cross examination, plaintiff's attorney asked whether

an individual who was limited to sedentary work would be capable of performing the jobs described in response to the second hypothetical. [Tr. 68.] Dr. Blank responded that the individual would not be able to perform those jobs, but that there would be unskilled sedentary work for such a person. [Id.]

V. DISCUSSION

A. The ALJ's findings

The ALJ undertook the required five-step analysis and determined that the plaintiff carried her burden at the first four steps. The ALJ made the following findings: (1) plaintiff met the disability insured status requirements between July 1, 1997 and June 30, 2001; (2) she has not engaged in substantial gainful activity since July 1, 1997; (3) the medical evidence establishes that she has non-insulin dependent diabetes mellitus, carpal tunnel syndrome on the left, impingement syndrome in the left shoulder, and severe impairments due to anxiety, but that the impairments did not meet or equal any listed impairments; (4) plaintiff is unable to perform any of her past relevant work. [Tr. 27.]

The ALJ determined at step five that plaintiff has the residual functional capacity to meet the physical exertional

requirements of light work which does not require lifting objects above the shoulders.<sup>7</sup> He also found that plaintiff's mental functional limitations resulting from anxiety limited her to "simple routine repetitious work with one or two instructions in a supervised low stress environment." [Id.] He cited Exhibits 4F, 9F, 17F, and 20F-21F in support of the findings of plaintiff's RFC. [Id.] The ALJ concluded that plaintiff's statements concerning her physical and mental symptoms were not credible because of "inconsistencies in her oral statements and her failure to comply with suggested treatment." [Tr. 33.] He found the plaintiff was able to perform light jobs such as packing machine operator, molding machine operator, or grinding machine operator. [Tr. 28.] He found plaintiff was not disabled, and denied disability insurance benefits. [Tr. 28.]

The ALJ found that plaintiff's complaints regarding her

---

<sup>7</sup>The full range of light work generally requires standing and walking intermittently for a total of about six hours of an eight hour work day. Sitting may occur during the remaining time. Lifting requirements for most light jobs can be accomplished by occasional rather than frequent stooping. Many unskilled light jobs are performed primarily in one location, with the ability to stand being more critical than the ability to walk. Light jobs require use of the arms and hands to grasp and to hold and turn objects, and generally they do not require the use of the fingers for fine activities to the extent required by sedentary work. [Tr. 32.]

impairments were not credible based upon the following:

The record further documents that she has been generally non-compliant with recommended medical treatment for her conditions. It appears that she has little motivation to improve and or maintain her health and return to employment. [Tr. 24.]

Regarding her anxiety, the ALJ found that:

Except for self medication with marijuana and recently prescribed treatment with Paxil she has not been treated for this condition. She gave discrepant reports of child abuse at a consultative examination with Dr. Syed and at an evaluation with Dr. Dreisbach. She also gave discrepant statements regarding her use of marijuana. [Id.]

He concluded that "the claimant's complaints regarding her impairments are not credible in view of inconsistencies in her oral statements and her failure to comply with suggested treatment." [Id.]

B. Plaintiff's Argument

Plaintiff contends that the ALJ erred in concluding that there were sufficient jobs available that plaintiff could perform based on the VE's testimony in response to the second hypothetical. [Pl.'s Mem. at p. 7.] The second hypothetical, plaintiff argues, was inaccurate because it did not reflect plaintiff's mental condition, including her diagnoses of panic disorder and/or post-traumatic stress disorder, and did not

take into account manipulative limitations caused by carpal tunnel syndrome. [Id. at pp. 7-8.] Plaintiff further argues that the ALJ should have used the VE's response to the first hypothetical, which did include limitations imposed by panic attacks, to assess plaintiff's residual functional capacity. The VE responded that such an individual would be unable to work.[Pl's Mem. at p. 8.] Finally, plaintiff contends that her testimony regarding her symptoms is supported by medical evidence in the record, including nerve conduction tests positive for carpal tunnel syndrome [Tr. 200], and x-rays confirming multi-level degenerative disc disease. [Tr. 156.] Plaintiff argues that this evidence, combined with a substantial work record, accord plaintiff's testimony "great weight" under Rivera v. Schweiker, 717 F.2d. 719, 725 (2d Cir. 1983.) [Pl.'s Mem. at p. 8.]

Defendant responds that the ALJ was correct to exclude the possible effects of panic attacks from the second hypothetical because plaintiff was not treated on an ongoing basis for severe panic disorder, except for self-medicating with marijuana and agreeing to try Paxil prescribed by Dr. Dreisbach. [Def.'s Mem. at pp. 11-12.] Defendants argue that plaintiff's records from Hill Health Center do not show ongoing complaints of severe anxiety since 1998, despite her

claims of a long-term problem to Dr. Syed and Dr. Dreisbach. [Tr. 12.] Secondly, defendants argue that the ALJ was correct in determining that plaintiff's statements were not credible because plaintiff's statements regarding her dislike of medications is inconsistent given her testimony that she uses marijuana to control symptoms of anxiety. [Id.]

Because the ALJ found plaintiff's testimony was not credible, he determined that although plaintiff clearly suffered from some anxiety, she did not suffer from panic disorder, and that the symptoms of anxiety were not severe enough to preclude work described by the VE. [Tr. 25.] In doing so, the ALJ discounted the opinions of examining physicians Dr. Syed and Dr. Dreisbach that plaintiff suffered from panic disorder, and Dr. Syed's diagnosis of post-traumatic stress disorder. The court must thus determine whether the ALJ's assessment regarding plaintiff's mental impairments complied with the legal requirements of the SSA, and whether his decision was supported by substantial evidence.

In making a disability determination, the ALJ must consider "the claimant's subjective evidence of pain and physical incapacity as testified to by himself and others who observed him." Carroll v. Secretary of HHS, 705 F.2d 638, 642

(2d Cir. 1983). As a fact-finder, the ALJ is free to accept or reject the testimony of witnesses. Williams v. Bowen, 859 F.2d at 260. A finding that a witness is not credible must be set forth with specificity, and must be consistent with other evidence of record. Id. at 261; Campbell v. Barnhart, 178 F. Supp. 2d 123, 127 (D. Conn. 2001). However, "an individual's statements about the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or her ability to work may not be disregarded solely because they are not substantiated by objective medical evidence." S.S.R. 96-7p (1996).

The ALJ is correct that plaintiff made inconsistent statements about child abuse to Dr. Syed and Dr. Dreisbach. Specifically, she reported to Dr. Syed that her mother had been cruel to her as a child [Tr.331], but she did not report any physical, emotional, or sexual abuse when questioned on this topic by Dr. Dreisbach. [Tr. 411.] However, plaintiff's testimony with respect to her long history of anxiety and the extent of her symptoms is consistent throughout the rest of the record. She complained to both Dr. Syed and Dr. Dreisbach that she had experienced panic attacks for many years and feels constantly nervous, and described the same symptoms including shortness of breath, sweating, and dizziness with

the onset of the attacks. [Tr. 332,410.] Plaintiff testified at the hearing that she suffered from attacks going back to 1970. [Tr. 37,40.] She complained to Dr. Alam about anxiety, headaches, and dizziness, and a portion of her exam had to be terminated because she became dizzy and started to fall. [Tr. 339.]

Furthermore, the ALJ never asked plaintiff about the source of her mental impairments or sought to resolve this inconsistency. In cases where pain or other subjective symptoms are alleged, however, the ALJ's decision must contain a thorough discussion and analysis of the objective medical and the other evidence, including the individual's complaints of pain or other symptoms as well as the ALJ's personal observations. Gilliams v. Apfel, 1999 U.S. Dist. LEXIS 4890, at \*13 (D. Conn. 1999). The rationale must include a resolution of any inconsistencies in the evidence as a whole and set forth a logical explanation of the individual's ability to work. Id. In this case, the ALJ erred when he used plaintiff's conflicting statements to discredit her testimony, but made no effort to resolve the inconsistency in the record. At the very least, the ALJ should have discussed and weighed the conflicting statements in relation to the remainder of plaintiff's testimony about her subjective symptoms, which is

otherwise consistent.

Secondly, the ALJ determined that the lack of evidence of treatment for anxiety from her records from Hill Health Center in 1998-1999 supported his negative credibility finding. This is not accurate. Notes from a visit in December 1998 indicate that plaintiff was referred to Connecticut Mental Health for anxiety. [Tr. 312] Plaintiff also testified that she had been seeking mental health treatment for three years in West Haven, but had been unsuccessful because it was "always busy." [Tr.40.] She testified that her social worker had finally been able to enroll her in Bridges where she was first seen by Dr. Dreisbach. [Id.]

Third, the ALJ had no basis to assert that plaintiff's statements about her use of marijuana were contradictory. Plaintiff reported her use of marijuana to control anxiety to Dr. Syed and to Dr. Dreisbach. [Tr. 332, 411.] She reported to the Hill Health Center that she had treated headaches with marijuana. [Tr. 40.] At the hearing, she reported that since she had begun taking Paxil to control the symptoms of anxiety, she no longer used marijuana. [Tr.41.]

Finally, the ALJ found that plaintiff's lack of compliance with medications and his assessment that she has "little motivation to improve her health and return to

employment" were indicative of her lack of credibility. [Tr. 24.] It is undisputed that plaintiff has a history of non-compliance with medications, and that she was not seen on a regular basis for mental health treatment. However, in assessing credibility, the ALJ has a duty to inquire about possible explanations for non-compliance, or for lack of treatment. Social Security Ruling 96-7p provides:

[T]he adjudicator must not draw any inference about an individual's symptoms and their functional effects from a failure to seek or pursue regular medical treatment without first considering any explanations that the individual may provide, or other information in the case record, that may explain infrequent or irregular medical visits or failure to seek medical treatment. The adjudicator may need to recontact the individual or question the individual at the administrative proceeding in order to determine whether there are good reasons the individual does not seek medical treatment or does not pursue treatment in a consistent manner. S.S.R. 96-7p.

Such explanations may include the following:

the individual may not take prescription medication because the side effects are less tolerable than the symptoms; the individual may be unable to afford treatment and may not have access to free or low-cost medical services...." Id.

At the hearing, the ALJ did not inquire into possible reasons for plaintiff's failure to comply with medication and her sporadic medical treatment, and he did not discuss this in

his decision. Upon review of the record, however, this court finds several factors that may reasonably explain plaintiff's failure to follow prescribed treatment and the gaps in medical care which do not reflect negatively on plaintiff's credibility. Plaintiff asserts repeatedly that she is non-compliant with prescribed medications because she fears the side effects of these medications. While it may have been explained to plaintiff that the side effects were minimal, and while the average person may not fear such side effects, it is well-documented that plaintiff suffers from anxiety and panic disorder that could reasonably cause her to fear side effects, and thus not follow a prescribed course of treatment. Contrary to the conclusion of the ALJ, this is not indicative of lack of credibility; on the contrary, it may reasonably be considered evidence in support of her claim of severe limitation due to her mental condition. This is also supported by her testimony that she suffered from side effects of prescription medication in the past. In any case, marijuana smoking is not necessarily inconsistent with a fear of the side effects of prescription medications or surgery. In addition, while plaintiff's decision to forgo surgery for carpal tunnel syndrome, or her professed desire to control her diabetes "on her own," may not reflect wise health decisions,

these statements do not necessarily undermine plaintiff's credibility. Additionally, plaintiff's poor financial situation, as documented in her testimony and physician reports, may also offer reasonable explanation for her lack of ongoing mental health treatment in the past. Finally, there is evidence that plaintiff was seeking treatment for her mental health impairment. Plaintiff testified that at the time of the hearing she was being seen weekly by a counselor (Maureen) and once a month by Dr. Dreisback for her mental health conditions, and found medication (Paxil) and counseling helpful.

Furthermore, the ALJ failed to take plaintiff's long work history into account in his credibility assessment. A proper consideration of credibility should involve assessing factors such as evidence of a good work record, which the Second Circuit views as entitling a claimant to "substantial credibility." Montes-Ruiz v. Chater, 1997 U.S. App. LEXIS 32217, at \*8 (2d Cir. 1997)(citing Rivera v. Schweiker, 717 F.2d 719, 725 (2d Cir. 1983)). In this case, plaintiff worked consistently from 1966 to 1994, and sporadically until 1997. Plaintiff's long work history lends additional credibility to her testimony, and the ALJ erred by failing to consider this factor in his decision. Based upon the above factors, the

court finds that the ALJ's negative assessment of plaintiff's credibility is not supported by substantial evidence.

Defendant's second argument is that the ALJ did take into account plaintiff's mental impairments by limiting her to simple repetitive work and a low stress environment, and that plaintiff has failed to show how her mental impairments actually caused a greater degree of impairment. [Def.'s Mem. at p. 12.] In determining plaintiff's residual functional capacity, the ALJ ignored the findings of examining physicians Dr. Syed and Dr. Dreisbach that plaintiff suffered from panic disorder and post-traumatic stress disorder, presumably because he did not find her statements to these physicians sufficiently credible. It appears that, in his assessment of plaintiff's RFC, the ALJ also did not consider Dr. Syed's assessment of plaintiff's GAF of 35-40 ("some impairment in reality testing or communication (e.g. speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g. depressed man avoids friends, neglects family, and is unable to work")), or Dr. Dreisbach's GAF score of 50 ("serious symptoms (e.g. suicidal ideation, severe obsessional rituals) or any serious impairment in social, occupational, or school functioning

(e.g. no friends, unable to keep a job")). Scores in this range, however, would have a more significant impact on her ability to work than the ALJ's findings reflect.

Because the court has determined that plaintiff's credibility finding was flawed, the court finds that the ALJ's assessment that plaintiff had the RFC to perform at limited range of light work was not supported by substantial evidence. Accordingly, the court remands the case to the ALJ for consideration of the full range of plaintiff's mental impairments, including the complete diagnoses of Dr. Syed and Dr. Dreisbach with respect to her panic disorder, post-traumatic stress disorder and GAF score.

Third, plaintiff further contends that the RFC did not take into account the extent of plaintiff's physical impairments due to carpal tunnel syndrome. Defendant responds that Dr. Alam found no sign of current hand problems during the January 2000 examination, and plaintiff did not provide medical evidence that this continued to be a problem after that point. [Def.'s Mem. at p. 13.] In any case, defendants contend that the ALJ did include limitations imposed by carpal tunnel syndrome by limiting plaintiff to light work without the use of the fingers for fine manipulations. Social Security Ruling 83-14 addresses the nature of unskilled light

work as follows, "unlike unskilled sedentary work, many unskilled light jobs do not entail fine use of the fingers. Rather, they require gross use of the hands to grasp, hold, and turn objects." S.S.R. 83-14 (1983). Defendants argue there was no finding that plaintiff was limited in the ability to perform such gross manipulation and handling.

Defendants are correct that the assessments of treating and evaluating physicians limit plaintiff in the ability to reach overhead, and in the ability to perform fine manipulations. There is no objective finding that plaintiff is limited in the ability to grasp, hold, or turn objects. However, because the court has determined that plaintiff's own testimony may be credible, the court, upon remand, instructs the ALJ to consider her testimony regarding her ability to grasp, hold, and turns objects to the extent required by light work.

## V. Conclusion

For the reasons discussed above, plaintiff's Motion for Judgment on the Pleadings [doc # 9] is **GRANTED IN PART** to the extent that it seeks remand, and **DENIED IN PART**, to the extent that it seeks an immediate award of benefits. Defendant's Motion for Order Affirming the Decision of the Commissioner

[doc # 16 ] is DENIED. The case is remanded to the ALJ for proceedings consistent with this opinion.

Any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of its receipt by the parties. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Rules 72, 6(a) and 6(e) of the Federal Rules of Civil Procedure; Rule 2 of the Local Rules for United States Magistrates; Small v. Secretary of H.H.S., 892 F.2d 15 (2d Cir. 1989)(per curiam); F.D.I.C. v. Hillcrest Assoc., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED at Bridgeport this 26 day of March 2004.

\_\_\_\_\_  
/s/

HOLLY B. FITZSIMMONS  
UNITED STATES MAGISTRATE

JUDGE